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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,106	03/16/2004	Bran Ferren	1103-007-001-000000	3221
71/484 7590 04/01/2009 IV - SUITER SWANTZ PC LLO 14301 FNB PARKWAY , SUITE 220 OMAHA, NE 68154				
EXAMINER				
FRANKLIN, JAMARA ALZAIDA				
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2876				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/802,106

Applicant(s)

FERREN ET AL.

Examiner

JAMARA A. FRANKLIN

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE-08)
Paper No(s)/Mail Date 8/08; 9/08; 2/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgment is made of the amendment filed on 12/24/08. Claims 1-48 are currently pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-13 and 18-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Hinks et al. (US 4,625,101) (hereinafter referred to as 'Hinks').

Hinks teaches

regarding claims 1, 22, 34, 37, and 43 an item and method comprising:

an outer part (tire 14) including at least one outer material that is substantially opaque to visible light; and

an identifier including at least one three-dimensional configuration corresponding to the identifier, the at least one three-dimensional configuration being embedded within the at least one outer material and including at least one of:

a substantially empty cavity in the at least one outer material (col. 2, lines 55-68), or

at least one identifying material filling at least part of a cavity in the at least one outer material and wherein the at least one outer material in which the at least one identifying material fills at least part of the cavity is substantially opaque to visible light;

the item and method wherein the at least one outer material is transmissive to RF radiation (light of scanner 24);

the item wherein the item is produced by rapid prototyping;

the item wherein the identifier identifies the item as a member of a set of similar items (col. 1, lines 5-12);

the item wherein the at least one three-dimensional configuration is completely enclosed by the at least one outer material (see figure 2);

the item wherein the at least one three-dimensional configuration is directly accessible only by disassembling the item (col. 3, lines 56-63);

the item wherein the at least one identifying material emits identifying electromagnetic radiation when irradiated with specific electromagnetic radiation;

the item wherein the identifying material comprises a security tag;

the item wherein the identifying material comprises a radio-frequency identification device;

regarding claim 13, a method of identifying an item comprising:

detecting at least one three-dimensional configuration with a penetrating imaging tool (scanner 24), the detecting at least one three-dimensional configuration with a penetrating imaging tool resulting in an output from the penetrating imaging tool (col. 3, lines 1-18); and

reading identifying information by interpreting the output;

the method of claim 13, wherein the reading identifying information by interpreting the output includes: reading identifying information from at least one identifying material emitting identifying electromagnetic radiation when irradiated with specified electromagnetic radiation.

the method of claim 18 wherein the reading identifying information from at least one identifying material includes: reading identifying information from a re-radiating antenna;

the method of claim 18 wherein the reading identifying information from at least one identifying material includes: reading identifying information from a security tag; and

the method of claim 18 wherein the reading identifying information from at least one identifying material includes: reading identifying information from a radio frequency identification device.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hinks in view of Hazelrigg, Jr. (US 5,481,102) (hereinafter referred to as 'Hazelrigg').

The teachings of Hinks have been discussed above.

Hinks lacks the teaching of various imagers.

Hazelrigg teaches a method of identifying an item wherein detecting at least one code configuration with a penetrating imaging tool includes: detecting at least one code configuration with an x-ray imager;

the method wherein the detecting at least one code configuration with penetrating imaging tool includes: detecting at least one code configuration with a magnetic-resonance imager;

the method wherein the detecting at least one code configuration with a penetrating imaging tool includes: detecting at least one code configuration with an acoustic imager;

the method wherein the detecting at least one code configuration with a penetrating imaging tool includes: emitting acoustic energy and detecting an acoustic signature in response to the emitted acoustic energy (col. 3, lines 51-58).

One of ordinary skill in the art would have readily recognized that providing the Hinks invention with imagers of different styles would have been beneficial for allowing a wide variety of applications to make use of the item identifying method, thereby making the method more accessible to many. Therefore it would have been obvious at the time the invention was made to modify the teachings of Hinks with the imagers as taught by Hazelrigg.

Response to Arguments

5. Applicant's arguments with respect to claims 1-48 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hampson et al. (US 4,449,042) teach a redeemable container with end closure redemption code.

Claypool et al. (US 5,028,769) teach a device for reading a mold code on a glass bottle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMARA A. FRANKLIN whose telephone number is (571)272-2389. The examiner can normally be reached on Monday through Friday 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jamara A. Franklin/
Primary Examiner, Art Unit 2876

JAF
March 29, 2009

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Art Unit: 2876

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